



Yellowstone County Zoning Commission Minutes for the Meeting of Monday November 14, 2005

The County Zoning Commission met on Monday November 14, 2005 in the large conference room on the 4th floor of the Parmly Library, 510 North Broadway.

Oscar Heinrich, Chairman, called the meeting to order at 4:01 p.m.

Commissioners and Staff		1/10/05	2/14/05	3/14/05	4/11/05	5/9/05	6/13/05	7/11/05	8/8/05	9/12/05	10/10/05	11/14/05	12/12/05
Oscar Heinrich	Chairman	CANCELLED	1	1	CANCELLED	1	1	CANCELLED	1	1	1	1	
Jerome Musselman	Vice-Chair		1	1		1	1		1	1	1	1	
Al Littler	Commissioner		1	1		1	1		1	1	1	1	
Joan Hurdle	Commissioner		1	1		1	1		1	1	1	1	
Dennis Cook	Commissioner		1	1		1	1		1	1	1	1	
Nicole Cromwell	Planner II/ Zoning Coordinator		1	1		1	1		1	1	1	1	
Wyeth Friday	Planner II		1	-		1	1		1	1	-	1	
Elizabeth Allen	Planning Clerk		1	1		1	1		1	1	1	1	

Chairman Heinrich introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator
Lora Mattox, Planner II
Wyeth Friday, Planner II
Elizabeth Allen, Planning Clerk

ANNOUNCEMENTS:

There were none.

PUBLIC COMMENT

Chairman Heinrich asked if there was anyone else wishing to speak during the public comment portion of the meeting. **Chairman Heinrich** stated that any member of the public may be heard on any subject that is not on the agenda, and that the Yellowstone County

Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.

Patzy Nilson 1424 Hondo Way

Dan & Mary-Jane Hinckley 1340 Redwing Circle

Hank Nilson 1420 Hondo Way

Dean Stevenson 1437 Redwing Circle-

Katherine Nilson 1424 Hondo Way all spoke against the zone change on 3233 Bitterroot, to be heard on December 12, 2005 before this board.

Approval of Minutes:

Minutes of October 11, 2005 were delayed.

Public Hearings:

Chairman Heinrich reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of **November 22, 2005**.

Return Item 1: Zone Change #584

Ms. Mattox read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of denial. She explained the reasons for the staff decision.

REQUEST

This is a zone change request from Residential Multi Family to Community Commercial on a 1.64 acre Tract 1 of Certificate of Survey 1706. The property is located at 727 Bench Boulevard. The Planning staff is forwarding a recommendation of denial for this application.

APPLICATION DATA

OWNER:	Frank and Jayne Griep
APPLICANT:	Frank and Jayne Griep
LEGAL DESCRIPTION:	Tract 1 of Certificate of Survey 1706
ADDRESS:	727 Bench Boulevard
CURRENT ZONING:	Residential Multi Family
PROPOSED ZONING:	Community Commercial
EXISTING LAND USE:	Residential
SIZE OF PARCEL:	1.64 acres

APPLICABLE ZONING HISTORY

April, 1976: Allow an application to change the use and zone classification of 3.7 acres of land in the NW NW NW ¼ of Section 26, T.1N., R.26E., located at the southeast corner of Yellowstone River Road and Bench Blvd. at 727 Bench Blvd. from Residential 7000 (R – 72)

to Residential Multi-Family (RMF). The property is now residential and agricultural with the proposed use being multi-family dwellings and compartmentalized storage

CONCURRENT APPLICATIONS

None

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Residential 7000
 Land Use: Residential (northwest is Gainan's Greenhouse)

SOUTH: Zoning: Residential 6000
 Land Use: Residential

EAST: Zoning: Residential Multi Family
 Land Use: Residential

WEST: Zoning: Residential 7000
 Land Use: Residential

REASONS

This is a zone change from Residential Multi Family to Community Commercial on 1.64 acres of land located 727 Bench Boulevard. The property is located on the southeast corner of Bench Boulevard and Hilltop Road (Yellowstone River Road). The purpose of the zoning request is to allow the applicant to construct a Convenience Store on the property. The applicant states that with Bench Boulevard being improved, it will draw increased traffic making it less desirable to have residential development on the subject property. Bench Boulevard and Hilltop Road are designated as Primary Arterials allowing a high level of mobility to provide connections to other roadways and services. This intersection is currently controlled through a 4-way stop.

A convenience store type of development is allowed in Community Commercial, however, the Community Commercial zoning allows for more intense commercial development. Community Commercial zoning allows uses including hotels/motels, financial institutes, eating and drinking establishments without alcoholic beverages. Eating and drinking establishment with alcoholic beverages and gaming are only allowed in the Community Commercial zone by Special Review. The definition of Community Commercial is, "The Community Commercial zone is intended primarily to accommodate community retail, service and office facilities offering a greater variety than would normally be found in a neighborhood or convenience retail development. Facilities within the classification will generally serve the community, and is commensurate with the purchasing power and needs of the present and potential population within the trade area. It is intended that these business facilities be provided in business corridors or in islands (thirty (30) acres) centrally located in the trade area rather than a strip development along arterials."

The planning staff is forwarding a recommendation of denial on this application. Staff finds that Community Commercial zoning in an area that is zoned residential does not fit with the character of this area and does not support the most appropriate use of the land. Staff has based this finding on the 12 criteria for zone changes discussed below and on the Heights Neighborhood Plan.

The Heights Neighborhood Plan through community meetings and surveys has developed a plan that identifies the type of commercial development desired in residential neighborhoods. The Heights Plan states that high intense commercial development should be prohibited in residential areas. Residents support less intensive commercial developments on arterial intersections in residential neighborhoods. This less intense commercial development would include Residential Professional and Neighborhood Commercial. As part of this plan development, residents drafted a preferred future land use map. The subject property is located at two primary arterials within an area identified by residents as a mixed-use development. This mixed-use area would include high density residential and light commercial retail.

RECOMMENDATION

Denial

Discussion:

Commissioner Hurdle asked if a deed restriction is the same as covenants, because they are not enforced by law.

Ms. Mattox stated that they are very similar, because they enforced not by City government but by the neighborhood.

Commissioner Hurdle asked how the deed restriction could be changed and if one is easier than the other to change.

Ms. Cromwell stated that it is easier for a property owner to change a deed restriction.

Chairman Heinrich reminded the commission that the board cannot take deed restrictions or covenants into consideration when making a recommendation.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #584.

Public hearing opened at 4:15 p.m.

Proponents:

Frank Griep, stated that the neighbors don't want to see alcohol or a casino on this corner. He stated that during the neighborhood meeting the neighbors have retracted their opposition because of the change in covenants.

Commissioner Hurdle asked how many people attended the meeting.

Frank stated that they did not have a meeting however he spoke with

Steve Kenny 1214 24th Street West- asked if when this zone change is approved with the deed restrictions then the zone change would have to be reopened.

Ms. Cromwell stated that is incorrect. She stated that the covenants can be agreed upon by the neighbors but the Zoning Commission can not take the covenants into account. She stated that the covenants can be changed by the property owner.

Public hearing closed at 4:18 p.m.

Opponents:

Rebuttal:

Discussion:

Commissioner Littler asked about the properties in the area that are being used as commercial. Ms. Mattox pointed out the properties in the area.

Commissioner Littler stated that this is a property that will be developed commercially in the future.

Ms. Cromwell stated that the reason that the applicant had chosen CC is because they would be allowed larger building size.

Commissioner Hurdle asked if a variance could be applied for a larger building.

Ms. Cromwell stated that they can.

Commissioner Hurdle stated that she feels that NC is a better way to go.

Commissioner Littler stated that the problem he is having is that the property owner has tried to appease the neighborhood and yet the board can not take the deed restrictions into account.

Commissioner Littler asked if the building size is per use or per building.

Ms. Cromwell stated that they could have up to 3000 square feet per use. However, anything more than that will need a special review approval.

Commissioner Littler asked Steve Kenny if it would be possible to withdraw this application and try for neighborhood commercial.

Steve stated that they are concerned that this would limit the type of tenant that would be possible to put into this mini mall. The property is already being used in a commercial fashion in the area. The commission's time would be better spent by allowing the Community

Commercial with deed restrictions on this property.

Commissioner Littler stated that he has trouble allowing this in as CC because of the property.

Steve asked if Ms. Mattox would read the 12 criteria.

Ms. Mattox read the 12 criteria.

Motion:

On a motion by Chairman Heinrich, seconded by Commissioner Hurdle and passed by a 4-1 with Commissioner Littler voting against a recommendation of denial will be forwarded to the BOCC on November 22, 2005.

Item 2: Zone Change # 586

Mr. Friday read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. He said staff is forwarding a recommendation of denial. He explained the reasons for the staff decision.

REQUEST

This is a zone change request from Residential-9600 to Neighborhood Commercial on Lot 8, Block 3 of the Sunny Slope Acreage Tracts Subdivision. The lot is 27,051-square-feet in size. The property is located at 2758 Highway 312 northeast of the Billings Heights. The Planning staff is forwarding a recommendation of denial for this application.

APPLICATION DATA

OWNER:	Duane and Evan Hill
APPLICANT:	Duane and Evan Hill
LEGAL DESCRIPTION:	Lot 8, Block 3, Sunny Slope Acreage Tracts Subdivision
ADDRESS:	2758 Highway 312
CURRENT ZONING:	Residential-9600
PROPOSED ZONING:	Neighborhood Commercial
EXISTING LAND USE:	Residential
SIZE OF PARCEL:	27,051 square feet

APPLICABLE ZONING HISTORY

November 2004: A zone change request from Residential-9600 and Residential Manufactured Home to Community Commercial was approved on a portion of unplatted land in the SW1/4, SE1/4, NW1/4 of T.1N, R.26E, Section 11 (3.8 acres) and on C/S 216 and C/S 371 (2.2 acres). The property is the location of the former Zentz Lumber business.

May 1988: A zone change request from Residential-15000 to Highway Commercial was denied on Lot 1, Block 1 of the Oxbow Subdivision. The property is located about one half mile east along Highway 312 from the subject property.

August 1978: A zone change request from Residential-15000 to Neighborhood Commercial was denied on Lot 1, Block 7 of the Oxbow Subdivision. The property is located about one half mile east along Highway 312 from the subject property.

CONCURRENT APPLICATIONS

None

SURROUNDING LAND USE & ZONING

NORTH:	Zoning:	Residential-9600
	Land Use:	Residential
SOUTH:	Zoning:	Highway 312, Residential-9600, Agricultural Open Space
	Land Use:	Residential
EAST:	Zoning:	Residential-9600
	Land Use:	Residential
WEST:	Zoning:	Community Commercial
	Land Use:	Mini storage facility and single-family homes

REASONS

This is a zone change request from Residential-9600 to Neighborhood Commercial on Lot 8, Block 3 of the Sunny Slope Acreage Tracts Subdivision. The lot is 27,051-square-feet in size. The property is located at 2758 Highway 312 northeast of the Billings Heights.

The purpose of the zoning request is to allow the applicants to operate a small tax preparation and accounting business on the property using the existing residential structure. The applicants proceeded to file this zone change request application after a complaint was filed with County Code Enforcement regarding a sign at the property advertising the Accutax business and the operation of the business at the property. The Accutax business was located at 605 Lincoln Lane in the Billings Heights. The property at 605 Lincoln Lane is zoned Neighborhood Commercial. The applicants state that the business serves small business and individuals in the Billings Heights, Lockwood, Shepherd and the Huntley/Worden area. The location of the business on Highway 312 would provide better access to Accutax clients, according to the applicants. The applicants have stated that the business employs the two of them and their daughter as well as one or two other employees during tax season. The applicants are not using the property as their primary residence and have stated that they might stay there during tax season as necessary. The applicants state that with Highway 312 is being widened and improved in the area, it will draw increased traffic making it less desirable to have residential development on the subject property. The applicants state that utilizing the existing house and landscaping of the property will not cause any significant visual changes to the property.

The planning staff is forwarding a recommendation of denial on this application. Staff finds that Neighborhood Commercial zoning in an area that is zoned residential does not fit with the character of this area and does not support the most appropriate use of the land. Neighborhood Commercial zoning allows uses including many types of offices for construction companies to printing and publishing establishments. The zoning district also allows more intense uses like convenience stores with gasoline pumps, nurseries and garden supply stores, banks, coin-operated laundry facilities and funeral services. While there is Community Commercial zoning just west of this property, the continuation of strip commercial development along Highway 312 in this area of the County does not fit with the existing development in this area. In other parts of the County's zoning jurisdiction, efforts are being made to restrict commercial development to nodes at major intersections of roads where there may be limited existing commercial development and the location may warrant commercial services. This property is not located near a major intersection and has been a residential property like the neighboring properties in this area.

The improvements to Highway 312 do not justify changing the zoning along the roadway to commercial uses in a strip-development fashion. There also is the potential for some safety concerns for traffic entering and exiting the subject property onto Highway 312 regardless of the improvements made to the Highway. Depending on the use of the property under the Neighborhood Commercial zoning district, there could be a significant amount of traffic using the property's access. Planning staff recommended denial of a zone change from Residential-

9600 and Residential Manufactured Home to Community Commercial on the property directly west of the subject property in November of last year partly due to similar concerns about traffic impacts and safety (**See Applicable Zoning History**). Staff has based its findings for this zoning application on the 12 criteria for zone changes discussed below.

RECOMMENDATION

Denial

Discussion:

Chairman Heinrich asked about the colors on the map.

Mr. Friday clarified.

Commissioner Hurdle asked about having R-9600 in an area without water and sewer.

Mr. Friday stated that there are areas in the county that are zoned in this way without having sewer and water and was zoned with the expectation of having sewer and water.

Commissioner Cook asked about an attorneys office just up the road from this property and if this is a use that is

Mr. Friday clarified the zoning.

Commissioner Cook asked about future growth for this area, he would like to hear about the expectations for the property in this area. Commissioner Cook observed that there are a lot of businesses that are cropping up along Highway 312.

Mr. Friday stated that the Shepard Plan doesn't cover this area. The Heights Plan covers this area. He stated that the department does not foresee commercial development in this area.

Ms. Mattox stated that according to the Heights Plan and the annexation policy they would like to see green spaces.

Commissioner Littler asked about having a home occupation business in this area.

Mr. Friday stated that they would be allowed a home occupation in this area although there are restrictions.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #586.

The public hearing was opened at 4:35 p.m.

Applicant:

Evon & Duane Hill, stated that they would like to put in a tax preparation business into this location. She clarified three points regarding this application. The land already has many different zones, both residential and commercial. The highway is very close to the front of this property because of the new development of the highway. This property is not conducive to having a family because of its proximity to the highway. Most of the homes in this area face away from the highway; however, this home does not. She stated that although the zoning

would allow for gas stations the land will not. The water table is high in this area and the land is not served by sewer or water. The house will not be changed with the exception of the addition of a wheelchair ramp.

Duane Hill, P.O. Box 50091, stated that he understands that the commission can not take many things into consideration but using this property as a gas station is not viable. The change in the roads in this area is going to change the nature of this property. They were unable to speak with all of their neighbors but the neighbors that they spoke with had no problem with this zone change. This is such a small lot that he feels that any business on this size lot would not be able to bring in a large business.

Commissioner Musselman asked how many employees they have

Proponent:

Larry Coffman, 2732 Highway 312, stated that he would support the zone change and the best use of that property would be commercial.

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change #586.

Opponents:

Henry Nilson, 1420 Hondo Way, stated that since the change in ownership the approach has been changed and now there is a commercial approach. He feels that there is a lot of commercial property that is currently vacant and he feels that this would be

Dan Hinckley 1340 Redwing Circle, asked how the zoning came to be in this area. He stated that some residents have Heights water. He feels that any change in zoning would change the character of the neighborhood and he feels that they should have

Patsy Norton- 1422 Hondo Way, opposed to the change.

Dean Stevenson. 1437 Redwing Circle- opposed to the change, feels that the change in this zoning in this area is due to the improvements in the highway. The residents do not want to see this developed commercially. He feels that the imp

Mary Jane Hinkley 1340 Redwing Circle, opposed to the change for the same reason as the others. She is also concerned about what could happen to the property

Katherine Nilson, 1424 Hondo Way, opposed for the same reasons.

Rebuttal:

Duane Hill, stated that the concerns of the neighbors are valid and he would like to address those concerns. The approach from the highway will be changed from what is currently there. He stated that the neighborhood is very attractive and that is what attracted them to the area. He stated that they would like retire in this area. He stated that he did approach neighbors in

the area and none of them had concerns. He stated that there have been 3 zoning requests for this area in the past 25 years so the area is not rapidly changing. He stated that they have kept the property clean and they are a business best suited to this type of location.

The public hearing was closed at 5:19 p.m.

Discussion:

Commissioner Littler asked what the rule on a cottage industry is.

Ms. Cromwell stated that it is allowed as a home occupation. There are restrictions such as no signage, no outside employees and no more than 500 square feet.

Commissioner Littler asked if a person owned two homes, what percentage of time would they have to live at that residence.

Ms. Cromwell stated that there is no statute which says that they must live there a certain amount of time.

Chairman Heinrich asked what the difference between RP and NC.

Ms. Cromwell stated that in RP they would be allowed to have both of these uses, accounting and tax preparation.

Mr. Friday stated that the applicant believed that they would be unable to have the area zoned RP because of the square footage. However, RP would be acceptable for this property.

Commissioner Littler stated that if this commercial request is turned down, he believes that it would be wise to reapply for a RP zone change.

Motion:

On a motion by Commissioner Hurdle, seconded by Chairman Heinrich and passed by a 5-0 voice vote to a recommendation of denial of Zone Change #586 will be forwarded to the BOCC on their meeting of November 22, 2005.

The Public portion of the meeting ended at 5:30.

Other Business:

The Board discussed the procedures and problems with text amendments.

The Board decided to have their joint meeting with the City Zoning Commission on January 17, 2005.

Adjournment:

The meeting was adjourned at 5:52 p.m.

Oscar Heinrich, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk